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**Charles E. Nash, Consulting Forester**

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May 13, 2020

**via priority mail, with delivery tracking**

John Moosey; Borough Manager

Matanuska-Susitna Borough

350 E. Dahlia Avenue

Palmer, Alaska 99645

Jason W. Brune, Commissioner

Department of Environmental Conservation

State of Alaska

P.O. Box 1118000

Juneau, Alaska 99811

COL Philip J. Borders, Commanding Officer

USACE-Alaska District

P.O. Box 6898

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Michelle Pirzadeh, Acting Regional Administrator

U.S. Environmental Protection Agency, Region 10

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Seattle, Washington 98101

Andrew Wheeler, Administrator

U.S. Environmental Protection Agency

Ariel Rios Building m/c 1101A

1200 Pennsylvania Avenue NW

Washington, D.C. 20460-0003

## **Re: 60 Day Notice to Sue the Matanuska-Susitna Borough**

Please take note that sixty days from your receipt of this letter, I intend to bring suit for the violation described below, pursuant to the citizen suit provision of the Clean Water Act, section 505 (a)(1) ; as well as provisions in 33 USC 1365 and 40 CFR 135.2.

**Background-** In September of 1998, I was awarded a large volume, long term timber sale contract by the Matanuska-Susitna Borough. This timber sale is located near Trapper Creek, Alaska in a semi-remote area. At the time it was advertised and awarded, there was no road access to the timber sale. In February of 1999, a project kickoff meeting was held at the Matanuska-Susitna Borough offices. This meeting was attended by the Borough Public Works Director, other Borough employees, representatives from the applicable state and federal permitting agencies that had jurisdiction over this project and me. The crux issue at the meeting was creating access to the timber sale. This was going to require ten miles of new road construction and two long span bridges. The representative from the Anchorage District of the United States Army Corps of Engineers Regulatory Branch explained that, because construction of the road involved placing fills in numerous designated wetlands along the road route, a Clean Water Act Section 404 permit would be required from the Corps of Engineers. The Corps representative further explained that there was an available option to the 404 permit process. He indicated that because the road was going to access a timber sale, the Corps could issue a narrowly defined exemption to the 404 permit process for a single use road. This exemption, known as the Silvicultural Exemption, may be issued by the Corps strictly for the purpose of constructing access to timber land for management or harvesting purposes. The representative of the Corps very clearly explained to all present at the meeting that a road and related improvements like bridges, constructed using the Silvicultural Exemption, could not be transferred into the Borough road system and become a Borough maintained road without going through the 404 process and obtaining a 404 permit. Following the meeting, I approached the Borough Public Works Director and asked him if the Borough wanted to work with me to obtain a 404 permit for the road and bridges. His response was that the Borough was not interested and that I was on my own. I applied for and obtained a Silvicultural Exemption from the Anchorage District of the Corps. I then proceeded to construct a ten mile long road and two bridges, one 40 feet in length and one 160 feet in length. I completed this project in 2002. In 2003, the Borough began maintaining the road and placed it in Borough Road Service Area 30. The road has been part of the Borough road system ever since and the Borough has never obtained a 404 permit. During the intervening years, the Borough has widened the road, added numerous additional fills

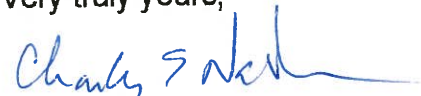
in the wetland areas and in 2015 removed the two bridges that I constructed for the purpose of accessing the timber sale and replaced them with new bridges. None of this work was done per the regulations of Section 404 of the Clean Water Act and with a 404 permit.

**Violation-**The Borough has clearly been in violation of the Clean Water Act for 17 years. This is a flagrant and willful violation by a government entity that clearly knows the regulations related to road projects that require fills in designated wetlands. When the Borough removed the bridges that I constructed under the aegis of the Silvicultural Exemption, they did so surreptitiously and without the proper permit for the project. Mobilizing numerous pieces of heavy equipment including a very large crane and delivering the materials for the replacement bridges as well as removing the original bridges on a road built using a Silvicultural Exemption solely for the purpose of accessing a timber sale, without first obtaining a 404 permit, is clearly a violation of the Clean Water Act. The Borough's conversion of my property, specifically the two long span bridges that I built as part of the access to the timber sale, has adversely affected me.

**Action-** The Clean Water Act clearly states that when a violator does not comply with the Clean Water Act, a person or entity that has been adversely affected by this violation has the right to file a citizen suit against the violator. The citizen bringing the suit may seek monetary damages, injunctive relief, civil penalty and reimbursement for legal costs and fees.

I believe that this NOTICE OF INTENTION TO SUE sufficiently describes the grounds that I have for filing a Clean Water Act citizen suit against the Matanuska-Susitna Borough.

Very truly yours,



Charles E. Nash